



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 3

RIN 2900-AN64

Clothing Allowance; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correcting amendment.

SUMMARY: The Department of Veterans Affairs (VA) published a final rule on November 16, 2011, amending its adjudication regulations governing eligibility for clothing allowances. VA has since determined that certain language added to the final rule could be construed to impose a restriction that VA did not intend. This document corrects that error.

DATES: This correction is effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Tom Kniffen, Chief, Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 461-9725. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On February 2, 2011, VA published a proposed rule (76 FR 5733) to revise 38 CFR 3.810 to clarify the circumstances under which a veteran may be entitled to more than one clothing allowance. Proposed paragraph

(a)(2)(ii) explained that a veteran who uses more than one prosthetic or orthopedic appliance or medication would be eligible for a clothing allowance for each such appliance or medication if each appliance or medication “[a]ffects a distinct article of clothing or outer garment.”

On November 16, 2011, VA published the final rule (76 FR 70883). In the final rule, VA stated that it was revising proposed paragraph (a)(2)(ii) in order to “clarify that the references to garments or clothing in this regulation are to types of garments, such as shirts, rather than to individual garments, such as a specific shirt” and to make clear that “more than one clothing allowance is payable when more than one type of article of clothing or outer garment is affected.” The final rule revised paragraph (a)(2)(ii) to state that a veteran who uses more than one appliance or medication would be eligible for a clothing allowance for each such appliance or medication if each appliance or medication “[a]ffects more than one type of article of clothing or outer garment.”

VA has determined that the language of the final rule could be construed to mean that each individual appliance or medication used by a veteran must affect more than one type of article of clothing or outer garment in order to qualify for a clothing allowance. As explained in the final-rule notice, however, VA did not intend to impose such a requirement, but intended only to clarify that each appliance or medication must affect a distinct type of article of clothing or outer garment, such as shirts, in order to qualify for a clothing allowance. Requiring each appliance or medication to affect more than one type of article of clothing or outer garment would impose an unintended restriction on eligibility for the clothing allowance and would create significant inconsistencies in VA’s clothing-allowance regulation. To correct this inadvertent error,

VA is amending 38 CFR 3.810(a)(2)(ii) by replacing the words “more than one type” with the words “a distinct type”. This change will make clear that an appliance or medication only needs to affect a distinct type of clothing or outer garment in order to qualify for a clothing allowance. This change does not alter the intended meaning of the regulation as explained in the proposed rule and the final rule notice, but would eliminate the potential for confusion or misinterpretation created by the ambiguous language included in the final rule.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), VA has determined that notice and prior opportunity for comment on this correcting amendment are unnecessary and contrary to public interest. As stated above, this correction is needed to accurately reflect the intent of the final rule and codified regulation and ensure that the inadvertent error does not adversely affect claimants. We previously provided public notice in the Federal Register and considered public comments on the proposed rule. See 76 FR 5733 and 76 FR 70883. VA’s intent and interpretation of § 3.810(a)(2)(ii) has not changed. This correction merely ensures clarity of VA’s intent and interpretation regarding the eligibility for a clothing allowance. For these reasons, VA has also determined pursuant to 5 U.S.C. 553(d) that there is good cause to make this change effective on the date of its publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: June 6, 2012

Robert C. McFetridge,
Director, Regulation Policy and Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is corrected by making the following correcting amendment:

PART 3 — ADJUDICATION

Subpart A-Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Amend § 3.810(a)(2)(ii) by removing “more than one type” and adding, in its place, “a distinct type”.

[FR Doc. 2012-14108 Filed 06/08/2012 at 8:45 am; Publication Date: 06/11/2012]